



#387-20

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City of Newton, Massachusetts

Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

Ruthanne Fuller
Mayor

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	November 5, 2020
Land Use Action Date:	January 13, 2021
City Council Action Date:	January 18, 2021
90-Day Expiration Date:	January 28, 2021

DATE: October 30, 2020

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Neil Cronin, Chief Planner for Current Planning
Katie Whewell, Senior Planner

SUBJECT: **Petition #387-20**, for SPECIAL PERMIT/SITE PLAN APPROVAL increase the nonconforming FAR from .57 to .72 where .48 is the maximum allowed by right, by constructing a rear addition, extending the nonconforming three-story structure and extending the nonconforming two-family use at 101-103 Warwick Road, Ward 3, West Newton, on land known as Section 31 Block 28 Lot 55 containing approximately 6,377 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 3.1.3, 3.1.9, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Working Session.



101-103 Warwick Road

EXECUTIVE SUMMARY

The subject property located at 101-103 Warwick Road consists of 6,377 square feet of land, improved with a nonconforming three and a half story, two family dwelling constructed circa 1920 in the Single Residence 3 zone (“SR-3”). Two-family dwellings are not allowed within the SR3 zone; as such, the use is legal nonconforming. The petitioner proposes to construct a rear addition which increases the nonconforming FAR from .57 to .72, where .48 is the maximum allowed by right. The addition to the structure requires special permits to increase the floor area ratio (“the FAR”), extend both the nonconforming two-family dwelling and the nonconforming three and a half story structure.

The Planning Department is unconcerned with the petition that increases the nonconforming FAR, and extends both the nonconforming three and half story, two-family dwelling. The addition meets new lot setbacks and there are similarly sized lots in the neighborhood with structures that have bulk in the rear.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for proposed addition that increases the nonconforming FAR, and extends the nonconforming two-family, three and a half story structure (§7.3.3.C.1, §3.4.1);
- The proposed addition which increases the nonconforming FAR will adversely affect the neighborhood (§7.3.3.C.2, §3.4.1);
- There will be a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3);
- Access to the sites over streets is appropriate for the types and number of vehicles involved (§7.3.3.C.4);
- The proposed extension of the nonconforming two-family dwelling will be substantially more detrimental than the existing nonconforming two-family dwelling is to the neighborhood (§3.4.1, §7.8.2.C.2);
- The proposed extension of the nonconforming three and a half story structure will be substantially more detrimental than the existing nonconforming structure is to the neighborhood (§3.1.3, §7.8.2.C.2);
- The proposed increase in the nonconforming FAR from .57 to .72 where .48 is the maximum allowed by right is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood (§3.1.9, and §7.8.2.C.2).
- The proposed increase in nonconforming FAR is not substantially more detrimental than the existing nonconforming structure is to the neighborhood

(§3.1.9, and §7.8.2.C.2).

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

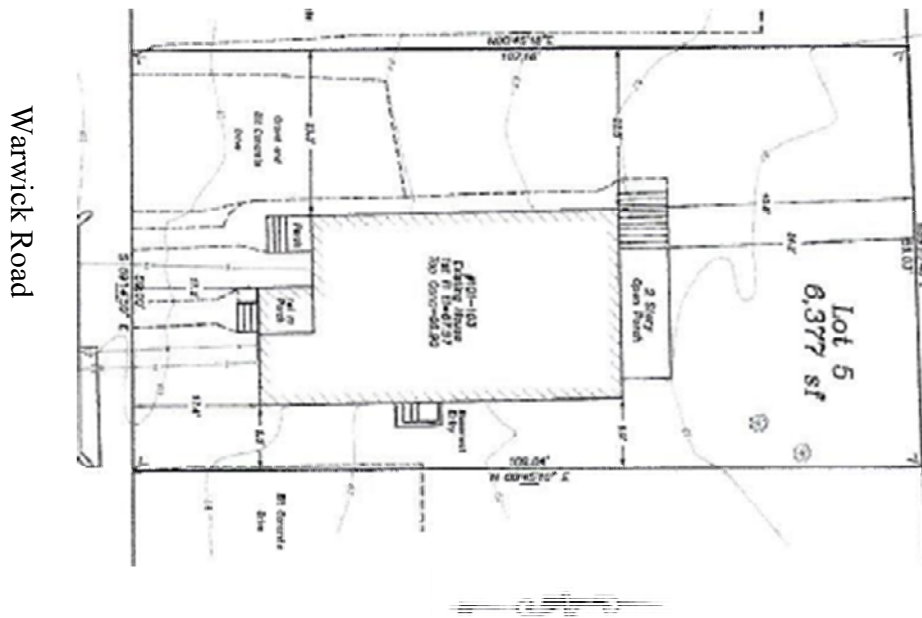
A. Neighborhood and Zoning

The subject property is located on Warwick Road in the SR-3 zone in West Newton. The surrounding area is entirely within the SR-3 zone (**ATTACHMENT A**). The uses in the area consist of single-family residential, multi-family residential and The Fessenden School, a private educational use abutting the site to the north (**ATTACHMENT B**).

B. Site

The site consists of 6,377 square feet of land and is improved with a nonconforming three and a half story, two family dwelling constructed circa 1920. The site is accessed by one curb cut from Warwick Road which provides access to a gravel and concrete driveway. The site has a downward slope from the front to the rear of the lot and there is little landscaping. Due to the slope of the site, the basement counts as a story, resulting in a nonconforming three and a half story structure with a height of 32 feet.

Existing Conditions



III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The use of the site will remain a nonconforming two-family use.

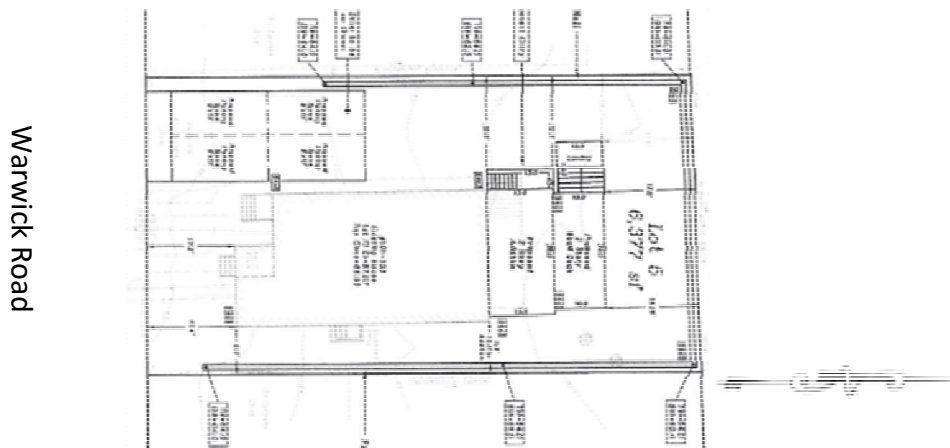
B. Site and Building Design

The petitioner is proposing a three-story addition to the rear of the existing dwelling. The addition will add 330 square feet to each of the three stories of the dwelling. The addition adds 990 square feet of FAR to the structure resulting in an increase in the nonconforming FAR from .57 to .72. The addition also meets new lot standards which allows for a .02 increase in allowable FAR. The addition results in a structure consisting of 4,592 square feet, where 3,061 is the maximum allowed as of right.

The proposed addition requires a special permit to extend both the nonconforming two-family dwelling in the SR-3 zone and the nonconforming three and a half story structure. Due to the change in grade in the location of the addition, the building height is increasing from 32.08 feet to 32.47 feet. However, the principal roofline is not changing and remains under the maximum allowed building height of 36 feet. The proposed addition and proposed two-story deck will extend the structure by approximately 23 feet towards the rear property line, reducing the rear setback from 34.2 feet to 17.8 feet, where 15 feet is required.

The petitioner is proposing a retaining wall along the side and rear property lines. The retaining wall reaches its maximum height at the northeast corner of the site, where it measures approximately three feet and seven inches in height.

Proposed Site Plan



The petitioner is also proposing changes to the front elevation by consolidating entrances to the dwelling units for common entry. The proposed deck at the rear is two levels, one for each unit with a two-level external stairway and landing. As the two-level stairway can be seen from the front elevation, the Planning Department suggests the petitioner consider landscaping to screen the bulk of the stairway and landing.

Existing Front Elevation



Proposed Front Elevation



Existing Right Elevation



Proposed Right Elevation



Overall, the Planning Department is unconcerned with the petition that increases the nonconforming FAR, and extends the nonconforming three and half story, two-family dwelling. The proposed addition meets new lot setbacks with allows for a .02 bonus in allowable FAR. There appear to be similarly sized lots in the

neighborhood with structures that have bulk in the rear. The sizable increase in nonconforming FAR is also due to the size of the lot at 6,377 square feet, as well as the basement counting as a story. For these reasons, the Planning Department is unconcerned with the petition that increases the nonconforming FAR.

C. Parking and Circulation

The petitioner is proposing tandem parking by expanding the existing surface parking towards the rear of the site to accommodate two stalls per unit dimensioned at 9 feet by 19 feet, per the Ordinance. With only two units, the Planning Department is unconcerned with the proposed tandem parking, and it appears much of the other properties in the neighborhood have tandem parking. Other properties on Warwick Road utilize similar locations for their surface level parking, in front of the house or to the side of the house.

D. Landscaping

While a landscape plan is not required with this petition, the Planning Department suggests that the petitioner screen the stairs and landing visible from the front elevation with landscaping.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum (**ATTACHMENT C**) provides an analysis of the proposal regarding zoning. The petitioner is seeking the following relief:

- §3.4.1, §7.8.2.C.2 of Section 30, to extend a nonconforming two-family dwelling.
- §3.1.3, §7.8.2.C.2 of Section 30, to further extend a nonconforming 3.5 story structure
- §3.1.3, §3.1.9 §7.8.2.C.2 of Section 30, to further extend the nonconforming FAR

B. Engineering Review

The addition and driveway expansion increases the impervious area by more than 400 square feet. The petition will be reviewed at the building permit stage by the Engineering Division.

C. Newton Historical Commission

The Chief Preservation Planner administratively approved the rear addition based on the submitted plans in March of 2020 and noted that the front elevation is a non-

structural element, which does not raise concerns. Therefore, no further review is required from the Chief Preservation Planner or the Newton Historical Commission.

V. PETITIONER'S RESPONSIBILITIES

The petition is complete.

ATTACHMENTS:

- ATTACHMENT A:** Land Use Map
- ATTACHMENT B:** Zoning Map
- ATTACHMENT C:** Zoning Review Memorandum, dated September 17, 2020
- ATTACHMENT D:** DRAFT Council Order

ATTACHMENT A

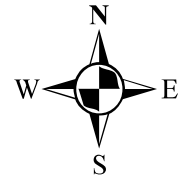
Zoning

101-103 Warwick Road

*City of Newton,
Massachusetts*

Zoning

 Single Residence 3

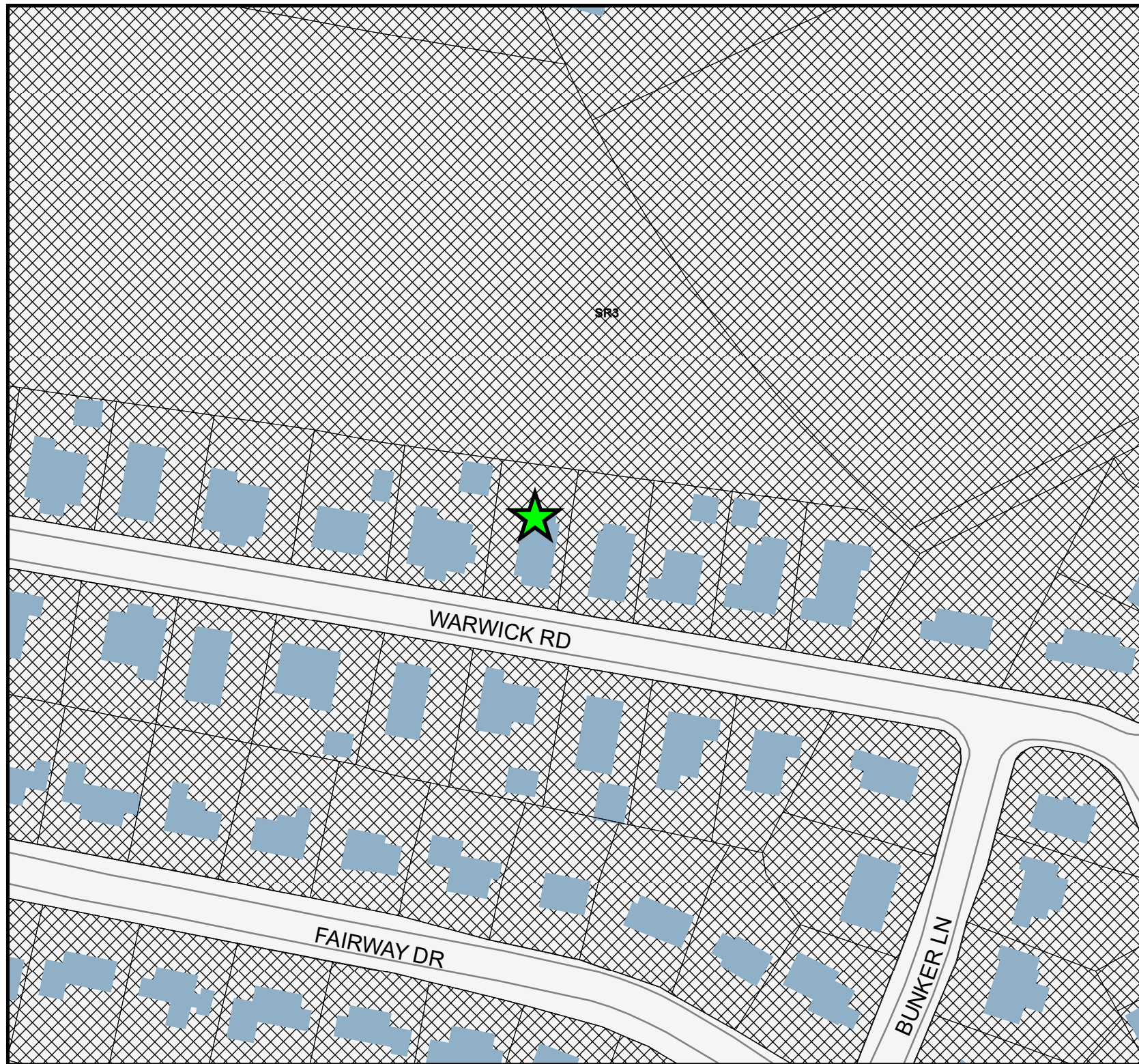


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield

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Feet

Map Date: October 26, 2020



ATTACHMENT B




Land Use

101-103 Warwick Road

*City of Newton,
Massachusetts*

Land Use

Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Private Educational

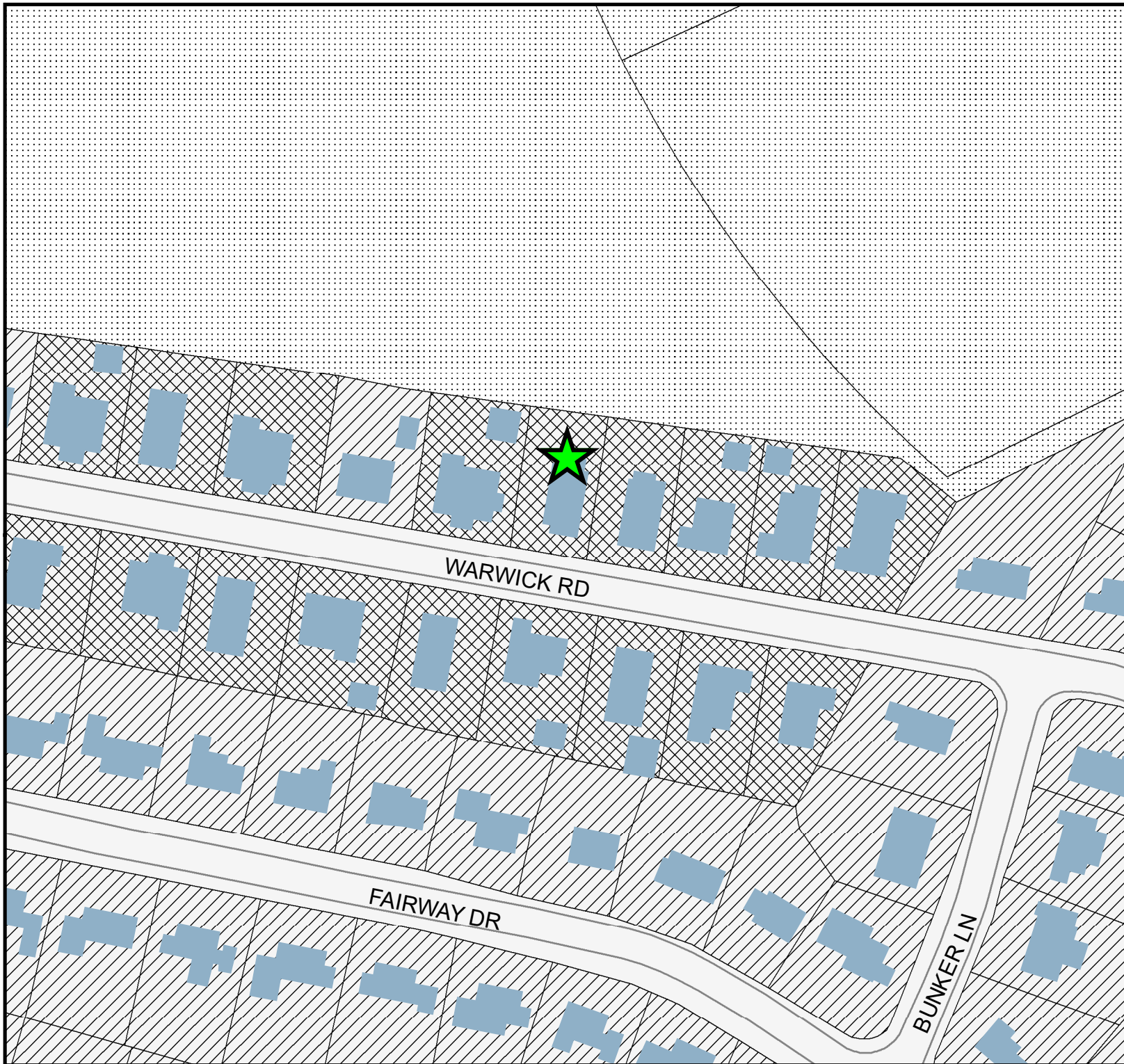


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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: September 17, 2020

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Neil Cronin, Chief Planner for Current Planning

Cc: Joseph A. DeNucci, Applicant
Terrence P. Morris, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request for a special permit to exceed FAR, to extend a nonconforming three-story structure and to extend a nonconforming two-family dwelling

Applicant: Warwick Road101 LLC	
Site: 101-103 Warwick Road	SBL: 31 28 0055
Zoning: SR3	Lot Area: 6,377 square feet
Current use: Two-Family Dwelling	Proposed use: No Change

BACKGROUND:

The property at 101-103 Warwick Road consists of a 6,377 square foot lot improved with a nonconforming two-family dwelling built in 1920 in the SR3 zoning district. The petitioner proposes to construct a rear addition to the existing dwelling. The proposed addition requires a special permit to extend the nonconforming two-family dwelling use, to extend a nonconforming 3.5 story structure and further extend the nonconforming FAR.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by Terrence Morris, attorney, submitted 9/17/2020
- Warwick Road East End Area Map
- Existing Conditions Plan, prepared by Verne T. Porter, PLS, dated 2/20/2020
- Proposed Grading Plan, prepared by Verne T. Porter, PLS, dated 6/14/2020
- Proposed Conditions Site Plan, prepared by Verne T. Porter, PLS, dated 9/11/2020
- Architectural Plans and Elevations, prepared by Scott Lewis, dated 6/22/2020
- FAR calculations, signed and stamped by Verne T. Porter, Jr, PLS, submitted 9/17/2020

ADMINISTRATIVE DETERMINATIONS:

1. The existing two-family dwelling is nonconforming, as it is located in the Single Residence 3 zoning district, which prohibits two-family dwellings per section 3.4.1. The petitioners intend to construct a two-story rear addition to the existing structure. To further extend the nonconforming two-family dwelling use requires a special permit per sections 3.4.1 and 7.8.2.C.2.
2. The property has a significant downward slope from the street to the rear of the lot, rendering the basement level the first story per the average grade, resulting in a 3.5-story structure, where 2.5 stories are the maximum allowed per section 3.1.3. The proposed rear addition extends from the first story (basement level) to the half story (attic level), further extending the nonconforming 3.5-story structure, requiring a special permit per sections 3.1.3 and 7.8.2.C.2.
3. The proposed construction adds 660 square feet to the 1st and 2nd floors with an additional 330 square feet counted in the basement, to the existing 3,606 square feet for a total of 4,596 square feet. The proposed addition further extends the already nonconforming FAR from .57 to .72, which exceeds the maximum of .48 allowed by sections 3.1.3 and 3.1.9, requiring a special permit per section 7.8.2.C.2.

SR3 Zone	Required	Existing	Proposed
Lot Size (Old Lot)	7,000 square feet	6,377 square feet	No change
Setbacks			
• Front	25 feet	17.2 feet	No change
• Side	7.5 feet	9 feet	No change
• Side	7.5 feet	22.5 feet	22.3 feet
• Rear	15 feet	34.2 feet	17.8 feet
Building Height	36 feet	32.08 feet	32.47 feet
Stories	2.5	3.5 stories	No Change
Max. Lot Coverage	30%	22.70%	28.45%
Min. Open Space	50%	67%	58%
FAR	.48	.57	.72

See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.1 §7.8.2.C.2	To further extend a nonconforming two-family dwelling	S.P. per §7.3.3
§3.1.3 §7.8.2.C.2	Request to further extend a nonconforming 3-story structure	S.P. per §7.3.3
§3.1.3 §3.1.9 §7.8.2.C.2	Request to further extend nonconforming FAR	S.P. per §7.3.3

CITY OF NEWTON
IN CITY COUNCIL

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to further extend the nonconforming two family structure, extend the nonconforming three and a half story structure, and to increase the nonconforming FAR from .57 to .72, where .48 is the maximum allowed by right as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The specific site is an appropriate location for proposed addition that increases the nonconforming FAR, extends the nonconforming two-family, and the nonconforming three and a half story structure because it is located in a neighborhood which is uniformly nonconforming two family dwellings with similar scale and lot sizes (§7.3.3.C.1, §3.4.1);
2. The proposed addition will not adversely affect the neighborhood because the bulk of the addition will be focused to the rear and not be visible from the street (§7.3.3.C.2);
3. There will be no nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3);
4. Access to the sites over streets is appropriate for the types and number of vehicles involved (§7.3.3.C.4);
5. The proposed extension of the nonconforming two-family dwelling will not be substantially more detrimental than the existing nonconforming two-family dwelling is to the neighborhood because it is located in a neighborhood which is uniformly nonconforming two family dwellings with similar scale and lot sizes (§3.4.1, §7.8.2.C.2);
6. The proposed extension of the nonconforming three and a half story structure will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood because the addition meets new lot setbacks and is not taller than the existing structure. (§3.1.3, §7.8.2.C.2);
7. The proposed increase in the nonconforming FAR from .57 to .72 where .48 is the maximum allowed by right is consistent with and not in derogation of the size,

scale and design of other structures in the neighborhood because the addition meets new lot standards and is not taller than the existing structure (§3.1.9, and §7.8.2.C.2).

8. The proposed increase in nonconforming FAR is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because the addition which increases the FAR is to the rear of the structure and not visible from the street (§3.1.9, and §7.8.2.C.2).

PETITION NUMBER: #387-20

PETITIONER: Warwick Road101 LLC

LOCATION: 101-103 Warwick Road, on land known as Section 31, Block 28, Lot 55, containing approximately 6,377 square feet of land

OWNER: Warwick Road101 LLC

ADDRESS OF OWNER: 121 Warwick Road
Newton, MA 02465

TO BE USED FOR: Two-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.4.1, and §7.8.2.C.2, to further extend the nonconforming two family dwelling; §3.1.3, and §7.8.2.C.2 to extend the nonconforming three and a half story dwelling, and §3.1.9, §3.1.3 and §7.8.2.C.2 to increase the nonconforming FAR

ZONING: Single Residence 3

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
 - a. Proposed Conditions Site Plan, signed and stamped by Verne T. Porter, Professional Land Surveyor, dated September 11, 2020
 - b. Proposed Grading Plan, signed and stamped by Verne T. Porter, Professional Land Surveyor, dated June 14, 2020
 - c. Architectural Plans and Elevations, prepared by Scott Lewis, unsigned and unstamped, dated June 22, 2020 consisting of the following eleven (11) sheets.

- i. First Floor Plan, A1
 - ii. Second Floor Plan, A2
 - iii. Attic Floor Plan, A3
 - iv. Basement Floor Plan, A4
 - v. Building Section 1 and Front Elevation, A5
 - vi. Building Section- Longitudinal, A6
 - vii. Right Side Elevation, A7
 - viii. Rear Elevation, A8
 - ix. Left Side Elevation, A9
 - x. First and Second Floor Framing, F1
 - xi. Attic Floor and Roof Framing, F2
2. Prior to the issuance of any Building Permit, the petitioner shall provide a final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
3. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
 - a. Recorded a certified copy of this order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
 - d. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.
 - e. Provided a notarized affidavit in accordance with Condition #1 above.
 - f. The petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management, should such a system be required, to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be recorded by the petitioner at the Middlesex South District Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
5. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development statements by a registered architect and professional land surveyor certifying compliance with Condition #1, including the as built FAR of the structure.
 - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.

- c. Filed with the Clerk of the Council, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.

DRAFT